

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL JOHN DRAKE and SUSANNA KAY
DRAKE,

UNPUBLISHED
July 12, 2005

Plaintiffs-Appellants,

v

No. 260851
Court of Claims
04-000048-MM

DEPARTMENT OF TREASURY,

Defendant-Appellee.

Before: Fitzgerald, P.J., and Owens and Meter, JJ.

PER CURIAM.

Plaintiffs appeal as of right the order granting summary disposition to defendant on the ground that plaintiffs failed to invoke properly the jurisdiction of the Court of Claims. We affirm.

This case concerns plaintiffs' state income tax liabilities for 2000, 2001, and 2002. Plaintiffs were issued W-2 Wage Statements by employers and Michael Drake was issued a 1099-R that reported a taxable distribution for the 2000 tax year. However, plaintiffs' tax returns for 2000 through 2002 listed no taxable income or tax liability. Each round of returns included statements advancing theories challenging the operations of the Internal Revenue Service. Defendant billed plaintiffs for taxes, penalties, and interest due for the three tax years.

On November 4, 2003, plaintiffs filed an appeal in the Michigan Tax Tribunal appealing Intent to Assess L026232, issued March 26, 2002, for tax year 2000, and Final Assessment L445334, issued November 15, 2002, for tax year 2001. On January 12, 2004, the tax tribunal issued its Sua Sponte Order of Partial Dismissal because plaintiffs failed to properly invoke the tax tribunal's subject matter jurisdiction over assessments L026232 and L445334 since the appeal was filed more than thirty-five days after issuance of the assessments. A final order of dismissal was entered on January 13, 2004.

Plaintiff then brought suit in the Court of Claims, seeking to have the unpaid tax assessments issued by defendant cancelled and seeking a refund of taxes withheld for tax year 1999, as well as a declaration that the Income Tax Act, MCL 206.1 *et seq.*, is unconstitutional. Defendant persuaded the court to grant summary disposition under MCR 2.116(C)(4) (lack of jurisdiction). Jurisdiction is a question of law that this Court reviews de novo. *W A Foote Memorial Hosp v Dep't of Public Health*, 210 Mich App 516, 522; 534 NW2d 206 (1995).

MCL 205.22(1) sets forth procedures through which an aggrieved taxpayer may appeal a tax assessment to the tax tribunal or the Court of Claims. Subsection (2) addresses perfection of an appeal and states that “[i]n an appeal to the court of claims, the appellant shall first pay the tax, including any applicable penalties and interest, under protest and claim a refund as part of the appeal.” MCL 205.22(4) provides that the “assessment, decision, or order of the department, if not appealed in accordance with this section, is final and is not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack.”

There is no dispute that plaintiffs did not pay the assessments in question, and thus did not fulfill the requirements of MCL 205.22(2). Plaintiffs thus failed to perfect, or invoke, the jurisdiction of the Court of Claims. See *Montgomery Ward & Co v Dep’t of Treasury*, 191 Mich App 674, 680, 681-682; 478 NW2d 745 (1991). When a court is without jurisdiction of the subject matter, any action with respect to such a cause, other than to dismiss it, is absolutely void. *Fox v Bd of Regents*, 375 Mich 238, 242; 134 NW2d 146 (1965). The Court of Claims properly dismissed the case without addressing the substance of plaintiffs’ claims.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Patrick M. Meter

/s/ Donald S. Owens